Chicago Tribune Co. *and* Chicago Web Printing Pressmen's Union No. 7, a subordinate Union of the Graphic Communications International Union, AFL–CIO. Case 13–CA–31544

March 31, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On August 17, 1994, Administrative Law Judge Robert W. Leiner issued the attached decision. The Respondent filed exceptions with a supporting brief[1] and a reply brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Chicago Tribune Co., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel moved to strike portions of the Respondent's exceptions and brief on the ground that they rely on evidence outside the record and they fail to meet the specificity requirements of Sec. 102.46(b) of the Board's Rules and Regulations. We grant the General Counsels motion to the extent that it pertains to Respondent's references to extra-record evidence.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In adopting the judge's decision, we rely on the Board's decision in *Page Litho, Inc.*, 311 NLRB 881 (1993). The Board in that decision reaffirmed its adherence to its ''clear and present danger'' test for determining whether an employer is justified in withholding names and addresses of strike replacement employees from a bargaining representative based on claims of union misconduct. The Board rejected the employer's defense because there had been no union conduct involving intimidation and harassment for more than 4 months. In the instant case, the judge found that a period of 5 or 6 years had elapsed since any union intimidation, coercion, harassment or violence. Accordingly, he found no clear and present danger to replacement employees.

As in *Page Litho*, we respectfully disagree with the Seventh Circuit's decision in *Chicago Tribune v. NLRB*, 965 F.2d 244 (7th Cir. 1992), in which it disapproved of the Board's ''clear and present danger'' test as imposing too stringent a burden on an employer which seeks to withhold names from a union. We also note, however, that the instant situation is distinguishable from that before the court. There the picket line violence was contemporaneous with the request for information; here there had been no violent incidents for 5 or 6 years. Accordingly, we find in agreement with the judge that the Respondent violated Sec. 8(a)(5) and (1) by refusing to furnish the names and addresses of replacement employees as requested by the Union.

Member Cohen adopts the judge's decision, but finds it unnecessary in this case to rely on the Board's ''clear and present danger'' test. Rather, he finds that, in the circumstances here, a replacement employee could not reasonably fear acts of intimidation, harassment, or violence following a 5- to 6-year period free of such conduct by the Union or its members. During that period, returning strikers and replacements worked beside each other without incident.

Paul Hitterman, Esq., for the General Counsel.
R. Eddie Wayland and *Rhea E. Garrett II, Esqs. (King & Ballow)*, of Nashville, Tennessee, for the Respondent.
David Mathews, Esq. (Carmell, Charone, Widmer, Mathews & Moss), of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT W. LEINER, Administrative Law Judge. This matter was heard in Chicago, Illinois, on June 1, 1994, on the General Counsel's complaint[1] which alleges, in substance, that the above-captioned Respondent, Chicago Tribune Co., violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), by failing to supply, at the Union's February 4, 1993 request, the names of all employees in an allegedly appropriate unit together with their current addresses.

Respondent's timely answer to the General Counsel's complaint denied certain allegations, admitted others, but denied the commission of unfair labor practices.

At the hearing, all parties were represented by counsel, were given full opportunity to call and examine witnesses, to submit relevant, oral, and written evidence, and to argue orally on the record. At the close of the hearing, the parties waived final argument and elected to submit posthearing briefs. Briefs submitted by Respondent and the General Counsel have been received and carefully considered.

On the entire record,[2] including the briefs, and on my particular observation of the demeanor of the witnesses as they testified, comparing their testimony to their several interests in the light of the surrounding circumstances and evidence, I make the following

FINDINGS OF FACT

I. RESPONDENT AS STATUTORY EMPLOYER

The complaint alleges, Respondent, Chicago Tribune Co. admits, and I find, that at all material times, Respondent, a corporation with places of business in Chicago, Illinois, has been engaged in the publication, circulation, and distribution of the Chicago Tribune, a daily newspaper, in the Chicago, Illinois area. During the calendar year ending 1993, Respondent, conducting his business operations, derived gross

[1] The underlying unfair labor practice charge was filed by Printing Pressmen's Union No. 7 on February 22, 1993, and a copy served by certified mail on Respondent on March 1, 1993.

[2] By an order of August 1, 1994, I denied Respondent's July 6, 1994 motion to reopen the record to submit further proof which I ruled to be cumulative.

revenues in excess of $200,000, held membership in or subscribed to various interstate news services, including the Association Press and United Press International, published various national syndicated features, and advertised various nationally sold products.

In conducting its business operations during the above period, Respondent purchased and received at its Chicago, Illinois facilities products and goods valued in excess of $50,000 directly from points outside the State of Illinois. Respondent concedes, and I find, that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE UNION AS STATUTORY LABOR ORGANIZATION

The complaint alleges and Respondent admits that, at all material times, Chicago Web Printing Pressmen's Union No. 7, a subordinate union of the Graphic Communications International Union, AFL–CIO (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.[3]

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

This above-captioned matter is the fourth in a series of cases[4] relating to the bargaining relationships between Respondent and the several unions representing units of its employees.

At the opening of the instant hearing, all parties entered into an agreement (Jt. Exh. 1) whereby the parties stipulated to the authenticity of (and there have been no subsequent objections to the admissibility of) three further joint exhibits. Joint Exhibit 2 consists of testimony and exhibits previously admitted into the record in *Chicago Tribune Co*., 304 NLRB 359 (1991). Joint Exhibit 3 stipulates to the authenticity of (and there appears no objection to the admissibility of) testimony and exhibits previously admitted into the record in *Chicago Tribune Co*., 303 NLRB 682 (1991). Lastly, the parties entered into a further stipulation of facts:

> 1. On July 18, 1985, the employees represented by the Charging Party struck Respondent. Simultaneously, employees in other bargaining units struck Respondent. The unit strikers unconditionally offered to return to work on January 30, 1986.
>
> 2. The Union and Respondent agreed to a preferential rehiring list for the strikers. Respondent began making offers of reinstatement to employees on the list in May, 1989. To date, Respondent has offered reinstatement to approximately 197 strikers. Some of the strikers accepted these offers, others did not. Some of the reinstated strikers worked for Respondent for a time, then resigned, retired, died, or were terminated. After being reinstated, former strikers have worked side-by-side with the replacement employees in the Press Department. Currently, there are approximately 50 former strikers and approximately 130 replacement employees performing work in the Press Department excluding supervisors.

As in other cases alleging violation of Section 8(a)(5) of the Act, as in the instant case, the General Counsel is ordinarily obliged to plead and prove the appropriateness for purposes of collective bargaining, within the meaning of Section 9(b) of the Act, of a unit of employees in which the employer must bargain. In the instant case, the unit pleaded by the General Counsel was subject to Respondent's denial as to its appropriateness. The parties agree, however, that the appropriateness of the pleaded unit is currently before the Board in *Chicago Tribune Co*., 304 NLRB 259 (1991), supra. At any rate, the Respondent admitted at the present hearing not only that certain elements of the pleaded unit did constitute an appropriate unit, but conceded that the replacement employees (hired by Respondent following the Union's 1985 strike), whose undisclosed names and addresses form the basis of the instant alleged unfair labor practice, are members of the bargaining unit represented by the Union (R. Br. 2). Thus, for purposes of resolving the issue in this case, the parties agree that they have removed the issue of the appropriateness of the bargaining unit by agreeing that, whatever else, the replacement employees, whose names and addresses Respondent has declined to provide to the Union, are members of the bargaining unit represented by the Union.

There is no dispute that, as above noted, employees represented by the Union, among other of Respondent's employees, commenced a strike on July 18, 1985, following expiration of a collective-bargaining agreement covering such unit employees. Following the strike, Respondent hired certain replacement employees. Regardless of the permanency status of these replacement employees, Respondent and the Union agreed to a preferential hiring list for returning strikers prior to Respondent's offers of reinstatement to the strikers commencing May 1989. The preferential hiring list was established after the Union made an unconditional offer to return to work on behalf of the striking unit employees.

As the General Counsel concedes, the evidence shows that during and after the strike, there were acts of violence and intimidation against supervisors and nonstrikers. Some were perpetrated by striking members of the Union; others were committed by members of other striking unions or were otherwise not legally identified. The General Counsel further concedes that the severity of these incidents ranged from unsolicited orders for food deliveries, magazine subscriptions (or as the record shows, the entry of spurious advertisements for the rental and sale of housing) to an incident of stabbing of a Respondent delivery driver.[5] On the other hand, there

[3] Respondent further concedes that William O. Howe, its director of labor relations, at all material times has been an agent of Respondent within the meaning of Section 2(13) of the Act.

[4] *Chicago Tribune Co*., 303 NLRB 682 (1991) (Chicago Mailers Local 2); *Chicago Tribune Co*., 304 NLRB 259 (1991) (Chicago Web Printing Pressman's Union No. 7, Administrative Law Judge Marion Ladwig); *Chicago Tribune Co*., 304 NLRB 495 (1991) (Chicago Typographical Union No. 16); *Chicago Tribune Co*., 303 NLRB 682 (1991) (Chicago Mailers Union Local 2), denied enf. 965 F.2d 244 (7th Cir. 1992) (Administrative Law Judge Robert A. Giannasi). The decision in Chicago Tribune Co. and Chicago Web Printing Pressman's Union No. 7 has been remanded by the Board to Judge Ladwig for the purpose of taking evidence concerning Respondent's affirmative defenses.

[5] The General Counsel's concession fails to supply the full flavor of the Union's actions. In January 1986, it was necessary for Chicago mounted police to disburse a mob preventing the movement of Respondent's delivery trucks. When the trucks attempted to leave

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is no dispute that there have been no instances of violence or intimidation since 1988 or 1989 (Tr. 287). With the recall of strikers to employment commencing May 1989, these former strikers and the replacement employees have been working side by side at bargaining unit work without incident up through the present time (June 1, 1994). The record shows that both categories of unit employees arrive at work on their shifts at the same time, depart at the same time, and use the same entrance gates and parking lot. Although Respondent has offered reinstatement to a total of 197 former strikers, at the time of the hearing, there were 50 former strikers employed alongside of 130 replacement employees in the press department unit excluding supervisors. Respondent has undertaken no special security measures peculiar to the side-by-side employment of former strikers and replacements in the press department.

B. *The Union*

The Union is a citywide local representing employees employed in the Chicago area printing industry also representing employees at other Chicago newspapers including the Chicago Sun Times and the Wall Street Journal. The Union's executive board, the Union's governing body, is composed of the local union president, vice president, and other officials elected to the executive board. The executive board oversees all union activities.

In Respondent, as well as in the other newspapers, the unit employees are described as composing a ''chapel'' whose chairman (''chapel chairman''), an office established in the Union's constitution, is elected by chapel members in good standing or appointed by the executive board president. The chapel chairman in each chapel is a full-time employee of the Employer. There is a chapel chairman on each of the three shifts at the Chicago Tribune. Among the obligations and duties of the chapel chairman is the authority to call chapel meetings, collect dues, resolve employee grievances (at least at the initial level), and communicate with employees concerning union activities in the chapel. Some of the chapel chairmen (not exclusively at Chicago Tribune) have successfully run for office on the Union's executive board. Several chapel chairmen are currently members of the executive board.

As above noted, since 1989, with the return of the strikers, replacement employees and reinstated strikers have been working side by side. They do so, of course, in the presence of the chapel chairman on the shift. Since this has been the process since in or about 1989, there is little question that the chapel chairman on each shift knows the names of each of the replacements working on his shift.

The General Counsel concedes (G.C. Br. 11) that the chapel chairmen are agents of the Union with regard to their statements and actions. I find, in addition, that they are fully agents of the Union notwithstanding, as the General Counsel argues (Br. 11) that the Union regularly finds it necessary to communicate directly with employees, rather than using the chapel chairman, in the handling of grievances beyond the initial stage and because Respondent does not automatically permit nonemployee union agents on its premises without special consideration of each visit. Notwithstanding that factual situations in the shop may arise where the chapel chairman (or his assistant) is too busy to communicate with employees, and notwithstanding that in such circumstances the Union directly contacts employees (especially in the continued prosecution of grievances), that does not make the chapel chairman any less a full agent of the Union. In short, I find that he is an agent of the Union for all purposes of communication of union views to members and employees, for the distribution of union literature, for the purpose of notifying Respondent of the desire to hold chapel meetings, and the notification of employees of those meetings.

C. *The Information Requests*

Following the Union's January 30, 1986 unconditional offer to return to work on behalf of the striking press department employees, as above noted, the former strikers were ultimately placed on a preferential rehiring list. The striking unions, in 1986, made information requests to Respondent concerning the terms and conditions of employment of the replacements, including their names and addresses. Respondent refused to divulge the names and addresses to the Union on the following grounds: (1) the safety and well being of the replacements; (2) the protection of the replacements' property; and (3) the replacements' expressed desire that their names and addresses not be given to the Union (Tr. 289). Other requested information was provided by Respondent to the Union.

The Respondent told the Union of its concern in releasing the names and addresses of the replacements because of replacements' fear of harassment and violence. Respondent also proposed an alternative. Respondent offered to give the names and addresses of the replacements to a certified public accounting firm which would then, according to Respondent, transmit any information the Union desired to the replacements. The Union did not respond to Respondent's offer. The Union stated only that it needed the names and addresses to communicate with the replacements (Tr. 160–169).[6]

In December 1989, the Union renewed its request for the names and addresses of the replacement employees. Other unions made similar requests for these names and addresses. Respondent treated all such requests in the same way. In each case, Respondent offered to provide the information to the neutral third-party accounting firm which would then transmit any information the Union desired to unit employees. In addition, Respondent offered to consider any alternatives that the Union might propose. As in 1986, the Union rejected Respondent's proffered alternative action of using

Respondent's premises, the mob stoned the trucks injuring the drivers, other Respondent employees, and a policeman. Respondent thereafter applied for and received a restraining order and injunction against the Union and other unions from obstructing entry and egress from Respondent's premises and from threatening, harassing, battering, or assaulting anyone entering or leaving Respondent's premises.

[6] The Union's subsequent unfair labor practice charge resulted in the issuance of complaint which was heard by Administrative Law Judge Marion C. Ladwig, the results of which are to be found at 304 NLRB 259 (1991), a case which was remanded to Judge Ladwig for hearing on Respondent's defenses. As of this writing, Judge Ladwig's subsequent decision has not been acted on by the Board. A similar charge filed by the Mailers Union was the subject of a complaint heard by Administrative Law Judge Robert A. Giannasi, the results of which are to be found in 303 NLRB 682 (1991), enforcement of which was denied in 965 F.2d 244 (7th Cir. 1992).

the neutral third party and offered no explanation as to why it was unacceptable (Tr. 167).

In 1989, in addition to requesting the names and addresses of the replacements, the Union requested the right to have a nonemployee union representative hold a union meeting on Respondent's premises with the unit employees. Respondent, as above noted, refused to provide the names and addresses of the employees to the Union, offered to furnish them to a third party, and observed that the Union was always free to schedule employee meetings held by the chapel chairman on Respondent's property but had failed to do so. Indeed, Respondent noted that it had never refused the request of a chapel chairman to hold a meeting on Respondent's premises. The Union not only failed to explain why the Respondent's effort and accommodation were insufficient, but also did not hold a chapel meeting or take any other action to attempt to communicate with the replacements.

During 1990 collective-bargaining sessions, the Union advised Respondent of its desire to post a notice soliciting unit employee opinion on the Union's contract proposals and bargaining position. Respondent agreed to post and, in June 1990, did post the notice on the press room bulletin board. Subsequently, Respondent posted similar union notices in the spring and summer of 1991. In 1992 negotiations, the Union requested Respondent to post a notice of union meetings of the Chicago Tribune chapel to be held off Respondent's premises (in Berwyn, Illinois). Respondent posted the notice.

By November 1992, and thereafter, the Union accused Respondent of unlawful direct dealing with unit employees and of unlawful refusal to permit union representatives to attend Respondent's meetings with employees especially in the presence of rumors that the Union was preventing wage increases. In addition, claiming an inability to communicate with unit employees, the Union again, on February 4, 1993, requested that Respondent send to the Union a list of all employees with their current addresses (R. Exh. 13). Respondent denied (R. Exh. 12) unlawful direct dealing, denied excluding any employee wishing to attend those meetings, and observed that the Union had failed to notify Respondent of the designation of its chapel chairman since 1989. Respondent stated that it was first advised of the Union's chapel chairman in January 1993. In addition, Respondent reminded the Union of the chapel chairman's right to discuss union matters with unit employees during nonworking time and the right to distribute union information in nonwork areas. Respondent stated that it was willing to notify the chapel chairman, in advance, of any employee meetings and to permit the chapel chairman to attend any such meeting, but with regard to nonemployee union visits to Respondent's property, Respondent observed that it does not permit such visits absent extraordinary circumstances. It agreed, however, to consider any such visit on a case-by-case basis as it did in its other units. (R. Exh. 12).

In its February 4, 1993 correspondence (R. Exh. 13) with Respondent, the Union again, as above noted, requested that Respondent provide a list of ''all employees with their current addresses.'' There is no question, however, that by 1993 not only the returned strikers but the Union's chapel chairmen were working side by side with the replacements for more than 5 years. As the Union ultimately conceded, it well knew the names of the striker replacements and what it really desired was their addresses. The Union, in that February 4, 1993 letter, observed that Respondent's reason for refusal to provide the names and addresses, i.e., the possibility of violence, whatever its prior merit, ceased having merit 8 years after the 1985–1986 violence and the fact that relations between nonstrikers and returned strikers had been peaceable for a long time.

In response to this letter, Respondent met with its press department supervisory personnel and advised them of the Union's request. After reviewing Respondent's position with regard to providing such names and addresses, Respondent's director of labor relations (Howe) told the supervisors to inform the replacement employees of the Union's request.

Respondent's manager in the press department, its chief supervisor, is supported by three product supervisors. Each product supervisor is in charge of the shift in which the pressmen work (Tr. 264). There appears to be a total of about 22 subordinate supervisors (on the 3 shifts) to the product supervisors (Tr. 264–265). These are the ''crew supervisors'' (Tr. 264). As I understood Howe's testimony, of the total of about 25 supervisors on the three shifts in the press department covering about 185 unit employees, 1 product supervisor told him that the replacement employees felt the same way as they had previously felt with regard to the giving of names (Tr. 265). No replacement employee testified nor did the product supervisor nor any supervisor who spoke to any such employee testify.

In any event, in 1993, as in 1986, Respondent declined to provide the names and addresses of the replacements directly to the Union. Director of Labor Relations Howe testified that his 1993 decision was based on many of the same reasons that Respondent had considered and advanced in 1986 when it had offered the accounting firm alternative: (1) the safety and well being of the replacements; (2) the protection of the replacements' property; (3) the replacements did not want their names and addresses given to the Union; (4) Respondent's accounting firm alternative, according to Respondent, constituted a reasonable accommodation to the Union's request; (5) the Regional Office's dismissal of a similar union charge concerning names and addresses in 1985; and (6) the 1992 decision of the United States Court of Appeals for the Seventh Circuit (965 F.2d 244) which upheld the lawfulness of Respondent's conduct in refusing to divulge the names and addresses directly to the Union and is offering a similar accommodation to the Mailers Union of supplying the names and addresses to an accounting firm (R. Br. 17).

On February 18, 1993, the Union dispatched an unfair labor practice charge to the Region which was filed on February 22, 1993. The charge alleged violation of Section 8(a)(5) of the Act by Respondent's denying union access to the Respondent's facilities to investigate grievances and by not providing the Union with the names and addresses of the replacements. The denial of access allegation was subsequently withdrawn.

The filing of the unfair labor practice charge then being unknown to Respondent, Respondent, on February 19, 1993, made a further response (G.C. Exh. 4) to union demands for names and addresses and an opportunity to be present on Respondent's premises in order to communicate with unit employees. Respondent again denied direct dealing with unit employees; asserted that the Union's alleged inability to communicate with unit employees was a false accusation; observed that the Union, through its chapel chairman, on

each shift, was free to communicate with coemployees both orally and by distribution of materials; again suggested that there was less violence and harassment of replacement employees because of Respondent's refusal to provide their names and addresses to the Union; and Respondent again offered the replacements' names and addresses through a certified accounting firm which would forward communications from the Union to the replacements. The Union did not respond to this February 19 letter.

With the Union's withdrawal from the unfair labor practice charge of its denial-of-access allegation, the General Counsel issued the instant complaint because of Respondent's refusal to provide the replacements' names and addresses. As Respondent observes, the Union conceded at the hearing, at the time it filed the charge, that it already knew the names of the replacement employees and that, as a practical matter, the only information actually being sought was the home addresses of the replacements (Tr. 244–246; R. Br. 19).

Respondent's Defenses

Respondent summarizes its defense supporting its refusal to supply directly to the Union the names and addresses of the replacement employees on three grounds (R. Br. 19): (1) the Union's information request for this material was invalid because the Union was not acting in good faith; (2) furthermore, even if the request was not made in bad faith, there would be no violation of the Act because the Union did not have a legitimate need for the requested information in view of the alternative means of communication available to the Union among unit employees; and (3) even if there were a legitimate need for the Union to have this information directly from Respondent, Respondent offered a reasonable alternative that satisfied any such legitimate need.

Discussion and Conclusions

As will be seen hereafter, the resolution of this case depends principally, if not exclusively, on Respondent's admission (Tr. 286–287) that there has been no reported instance of harassment, violence, or property damage against replacement employees or Respondent's supervisors for 5 or 6 years. Particularly in light of Respondent's failure to take any special security precautions relating to these employees and in the absence of any suggestion of some long-term vendetta or threat of retaliation by the strikers (or the Union) against the replacements, there follows the legal conclusion that there is no ''clear and present danger'' of intimidation, violence, harassment, or threats thereof directed at the replacement employees or Respondent's supervisors, personnel, or property.

Observing that it is unnecessary to reinvent the wheel in this type of case, it is nevertheless helpful to recall that Congress has encouraged the disclosure to the Union of the names and addresses of unit employees as part of the right of employees to be informed concerning the representational objectives and actions of their freely chosen bargaining representative.[7] The disclosure of the names and addresses of unit employees, in particular, furthers the congressional objective of having an informed employee electorate, *NLRB v. Wyman-Gordon Co*., 394 U.S. 759, 767, (1969):

> by allowing unions the right of access to employees that management already possesses. It is for the Board and not for this Court to weigh against this interest the asserted interest of employees in avoiding the problems that union solicitation may present. [Emphasis added.]

The presumptive right of a union to unit employees' names and addresses, information obviously relevant to its duties as the collective-bargaining representative, does not always predominate over all other interests. Notwithstanding its legitimacy, that union interest, like other union interests, does not necessarily predominate over all other interests in the form of some absolute rule, *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318 (1979). In *Detroit Edison*, supra, for instance, the Supreme Court held that the Board had abused its discretion in ordering an employer to turn over unit employees' psychological tests and answer sheets directly to the union rather than to a proffered psychologist, in view of the confidential nature to each such employee of his test scores. Similarly, the employer's interest in preserving the tests themselves was held by the court to obviate the necessity of the employer's turning over this material over directly to the union.[8]

In short, there is an obvious tension between the Union's presumptive right to the names and addresses of unit employees, the employees' rights of privacy under certain circumstances, and the Employer's obligation to reveal this otherwise necessary information to the unit employees' bargaining representative, *Chicago Tribune Co. v. NLRB*, 965 F.2d 244 (7th Cir. 1992).

As I informed the parties at the hearing, the resolution of the legal issue in the instant case appeared to me to be governed by the Board's position in the recent *Page Litho, Inc*., 311 NLRB 881 (1993). In that case the Board reaffirmed its reliance on the ''clear and present danger'' test as the measure of the burden of proof on employers who want to withhold presumptively obliged information from the union on the ground of violence, threats, or harassment of replacement employees.

In particular, the Board there reasserted the rules that (a) a union is presumptively entitled to the names and payroll records of bargaining unit employees including strike replacements; and (b) that an employer may withhold such information if there is a clear and present danger that the information would be misused by the union. In addition, the Board distinguished the court of appeals decision in *Chicago Tribune Co. v. NLRB*, 965 F.2d 244, supra, which disapproved of the Board's clear and present danger test as too stringent a burden of proof on the ground that in that case, the picket line violence was *contemporaneous* (italicized in *Page Litho, Inc*., supra at 882) with the Union's request for the names and addresses and the fact that the Employer offered reasonable alternatives for satisfying the Union's ulti-

[7] Names and addresses of potential unit voters must be disclosed to the Union where the labor organization is seeking certification. *Excelsior Underwear*, 156 NLRB 236 (1966).

[8] In *Detroit Edison*, the Court collects a number of instances wherein the employer's refusal to supply relevant information (as against the union's prima facie right to the information) was upheld. *Detroit Edison*, supra at 318 fn. 14.

mate informational objectives of ascertaining striker reinstatement rights.[9]

In *Page Litho, Inc.*, supra, the union requested the names and other information of unit employees 4 months after the end of a strike in which there were incidents of misconduct by the union. The Board stated:

> To hold in these circumstances that the [employer] need not provide the requested information would establish an unfortunate precedent, i.e., that on the basis of past strike misconduct, an employer could foreclose for an indefinite length of time the opportunity for the bargaining representative to obtain the names of some of the bargaining unit members.
>
> We conclude that the Respondent's purported fear of harassment was no longer reasonable and that the Union was entitled to the information requested . . . [cases cited].
>
> Thus, even if the *Chicago Tribune* court is correct that, in evaluating information and requests between employees and unions, employers are entitled to a standard that is more solicitous of the interest of employees who stand as third parties, we do not see how the latter's interests are given short shift by our holding in the instant proceeding.

It is clear from the above, and I find, that whatever the stringency of the Board's ''clear and present danger'' test is in creating a burden of proof on an employer who refuses to divulge otherwise statutorily obliged information, in cases, as the instant case, where the defense is based on past violence or intimidation against replacement employees, the Board has particularized and spoken on this issue. The Board held, that where 4 months passed after the last incident of reported violence or intimidation, that is a sufficient period of freedom from unlawful union action or the action of its adherents and members against the replacements to force the employer to divulge the names of the replacements. As the Board notes, to do otherwise, would license an employer, on the basis of past union strike misconduct, to foreclose for an indefinite length of time the right of the bargaining agent to obtain the names of its own unit members.[10]

In the instant case, it is not 4 months which passed, as in *Page Litho*, since the last reported incident of misconduct; rather, it is 5 or 6 years.

The holdings in *Page Litho, Inc.*, and *Detroit Edison v. NLRB*, demonstrate that the under the Board's Rule, the employer's presumptive obligation to divulge directly to the union may be rebutted only by showing preponderant opposing interests (privacy, *Detroit Edison*) or contemporaneous harassment or intimidation. The introduction of the concept of the use of altermate means of providing this information to neutral third parties (psychologists, *Detroit Edison*; accounting firms, *Page Litho*) is derived solely from the opposing interest, i.e., the contemporaneous intimidation or violence. In other words, it is only the union's contemporaneous harassment and violence against the replacements which permits consideration of the necessity and wisdom of providing alternate (i.e., shielded) methods of supplying this information to the union. Thus, in the absence of the union's contemporaneous violence or acts of intimidation, the entire concept of shielding the employees, of establishing an alternative means by which the employer will supply the information not to the union directly (to whom it has that prima facie obligation), but indirectly, is rendered irrelevant. The cases which demonstrate a modification of or exemption to the employer's duty to furnish, directly to the unit collective-bargaining representative information that is potentially relevant and useful to the union in discharge of its statutory responsibility under *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), all demonstrate a triggering mechanism which, when present, modifies the employer's statutory obligation. Absent that triggering mechanism, the employer's presumptive duty remains.

In the instant case, the 5 or 6 years of freedom from any union responsibility, or indeed any reported incidents whatsoever of union threats, intimidation, or violence against replacement employees, by itself militates against the existence of the triggering mechanism necessary to make relevant the necessity to consider alternative means of supplying information to protect replacement employees' rights and Respondent's own rights.[11] In addition to the 5 or 6 years' freedom from violence or intimidation, which is clearly the pivotal and decisive fact in this case, Respondent conceded (Tr. 288–299) that it maintains no special protection for the replacements; that all employees use the same entrances, use the same parking lots, and work on the same shifts without special protection or security precautions. I therefore conclude that Respondent has failed, under *Page Litho*, to demonstrate a clear and present danger to the replacement employees or to other relevant interests. I further find that Respondent has consequently failed to rebut the General Counsel's prima facie case—that the Union is now entitled to the names and addresses of all unit employees pursuant to its February 1993 requests therefor.

Respondent would distinguish *Page Litho, Inc.*, on the ground that the information sought in that case would help the union monitor vacancies among shift replacements and evaluate the Employer's wage proposals in light of what the Company was paying the replacements. Respondent notes that the union in *Page Litho* did not know the replacements' terms and conditions of employment. In the instant case, Respondent notes that the Union well knew the names and the terms and conditions of employment of the replacement employees and had no ''legitimate need'' for the requested information. In addition, Respondent observes that the chapel chairmen, working side by side with the replacements, never attempted to ask them their names or addresses although they

[9] In *Page Litho, Inc.*, the union stated that it requested the names and payroll information of replacement employees for the limited purpose of monitoring vacancies among strike replacements and evaluating the employees' wage proposals, *Page Litho, Inc.*, 311 NLRB at 882.

[10] The Board, even in the presence of a union's chronic violation of the Act, refuses to hang a ''scarlet letter'' on the union's presumptively lawful future actions. *Russell Motors, Inc.*, and *Amalgamated Local Union 355*, 198 NLRB 351, 352 (1972), enfd. as modified 481 F.2d 996 (2d Cir. 1973), cert. denied 414 U.S. 1062 (1973).

[11] The employer has property rights, inter alia, in the freedom of its establishment from interruption of production, safety, and discipline by virtue of threats against unit employees from performing their jobs. Thus, under contemporaneous acts of violence and intimidation, the employer's property rights must be honored under the above cases and to the extent provided there.

had full opportunity to do so. Respondent also notes that in *Page Litho*, the Board emphasized that the employer offered reasonable alternative for satisfying the union's ultimate informational objectives. In the instant case, Respondent notes that although it offered accommodation to the Union, the Union has never utilized or even responded to the offer.

With regard to the Respondent's attempt to distinguish *Page Litho, Inc*., it should first be noted that although the employer there offered to provide information to a neutral third party (*Page Litho*, supra at 882), the Board's specific holding does not refer to that fact. Rather, the Board, underlining its reliance on its ''clear and present danger'' test for the employer's defense against directly providing relevant, requested information to the union, observes only that the strike had been concluded 4 months beyond any reported act of misconduct by the union. Holding that period was a sufficient time in which to insulate the union's acts of violence from the union's request for information, it directed that the employer furnish the information directly to the union. In so holding, the Board concluded that the employer's purported fear of harassment was no longer reasonable and the union was entitled to the requested information without recourse to third-party involvement, *Page Litho, Inc*. at 883. Furthermore, the Board stated that even if the court in *Chicago Tribune* was correct in holding that the Board's ''clear and present danger'' standard was too strict and that ''employers are entitled to a standard that is more solicitous of the interest of employees who stands as third parties,'' the holding in *Page Litho*, even under the court's view, would not give ''short shift'' to employee interest, *Page Litho*, id.[12]

[12] The Board places the burdens of proof of ''clear and present danger'' of harassment and intimidation to escape the employer's *Acme Industrial* obligation on the employer. As a servant of the Board, I am of course bound by the Board's Rules, *Iowa Beef Packers*, 144 NLRB 615, 616 (1963). In this regard, I note that the General Counsel would have me discredit Director of Labor Relations Howe's testimony and find that Respondent's refusal of the Union's request for this information was pretextual and based on union animus. I find, on my observation of Howe as a witness, that his testimony, on the existence of a 5- or 6-year period of freedom from union acts of intimidation or harassment against replacement employees was given somewhat grudgingly. But the thrust and parry of examination and cross-examination and the reluctance of witnesses does not make Howe into an incredible witness. On the other hand, there is no question that Respondent, as far back as 1986, shortly after the Union's acts of violence and intimidation against replacement employees, voluntarily surrendered the names and addresses of replacement employees to the Mailers Union because that unit of employees was in the midst of an attempt to decertify the Mailers Union. That it did so with the consent of the employees is not dispositive. Respondent's present refusal to give Pressmen the same information, after 5 or 6 years of freedom from Pressmen (or any other) acts of intimidation, violence, or harassment, because of Respondent's alleged fear for the safety of replacement employees' persons and property thus contains traces of crocodile tears. Respondent, faced with the Union's February 4, 1993 request, apparently instructed its supervisors to tell the replacements that Respondent's position was to refuse to divulge their addresses. The evidence of Respondent seeking to discover actual replacement sentiment is obscure (Tr. 263–265). Respondent, despite its own interests, after all is not the surrogate of the replacements union sympathies. The replacements can be relied on to reject union overtures if that is their wish. I have, nevertheless, chosen to dispose of the case without regard to Howe's credibility and relied, instead, on the legal framework established by the Board in *Page Litho, Inc*., supra.

In *Page Litho*, it is true that the union wanted the names and addresses in order to monitor the vacancies among shift replacements and to evaluate wage proposals. In the instant case, the union president testified, and the General Counsel urges, that the information is necessary in order for the Union's proper prosecution of grievances among unit employees. The union president and other officers, rather than chapel chairmen, handle grievances above the initial stage of the grievance and therefore direct consultation and perhaps home visits are necessary for this purpose.

I do not fully credit the Union with regard to this limited reason for its wanting the home addresses.[13] It well knows the names of these employees and through the chapel chairmen, as Respondent points out, could easily ask the replacement employees for their addresses as well. I conclude, assuming arguendo that the Union's reason is relevant, that the reason the Union wants the home addresses of these replacement employees is to be found elsewhere, obviously in order to proselytize them. The Union may well be seeking to recruit them into active membership or at least support for the Union in its relationship with Respondent. This is a wholly legitimate function and, as noted in *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969), the names and addresses of unit employees are not only the subject of lawful union inquiry under *Acme Industrial*, supra, but are a matter whose disclosure is a subject of congressional encouragement. Thus, whether the Union wants the addresses of the employees to fully represent them in grievance procedures or to proselytize them and gain their support as union members in the unit, it is engaged in functions supported by the Act and public policy.

The fact that Respondent has, without exception, given chapel chairmen the right to post notices of chapel meetings and to hold chapel meetings on company property in nonwork areas on nonworktime and to post notices of chapel meetings to be held off company property is not inconsistent with the right of the Union to attempt to visit the homes of its members in order to better prosecute grievances or to persuade them to support the Union. Any replacement employee has the right to refrain from speaking to the chapel chairman in any confidential manner, attending chapel meetings, or even reading notices posted by the chapel chairman with regard to union meetings. In short, a replacement employee, potentially susceptible to union blandishments and capable of union sympathy, might reasonably avoid a public demonstration of any interest in the Union not only on Respondent's property, but also even in groups of employees at chapel meetings off Respondent's property. The privacy of the employee's home might secure him greater protection than attendance at a chapel meeting or speaking to chapel chairman on or off Respondent's property. When the Union's right of attempting to visit the employee at his home is joined with

[13] I recognize that, once it is concluded, as here, Respondent has failed to support its burden to prove a ''clear and present danger'' defense, and failing any other legal defense, it may not inquire into the purpose for which the Union desires the home addresses. Respondent's obligation, in addition, is to the Union. The fact that union agents (chapel chairmen) could ask the replacements for their home addresses is not dispositive of Respondent's direct obligation to the Union.

a replacement employee's right or desire to support the Union, the privacy of the employee's home is added protection to an employee manifesting any sympathy with or interest in the Union at or off the Respondent's premises. Thus the Union's right and interest in the employee's address is joined to the replacement employee's own interest in privacy. The use of chapel chairmen as conduits or agents is not an entirely satisfactory device in dealing with the replacements.

It should also be noted, however, that in *Page Litho*, supra, 311 NLRB 882 fn. 8, the Board distinguishes, inter alia, *Webster Outdoor Advertising Co*., 170 NLRB 1395, 1396 (1968), enf. sub. nom. *Painters Local 1175 v. NLRB*, 419 F.2d 726, 737 (D.C. Cir. 1969), where the employer was entitled to withhold the names of replacement employees. The Board noted that in *Webster*, unlike *Page Litho, Inc*., the union did not provide assurances on the employer's request that the names would not be used for harassment purposes. See also *Circuit-Wise, Inc*., 308 NLRB 1091, 1097 (1992). The Board's Rule, however, is that the request for assurance against union abuse of supplied information must flow from the *employer* and not merely be volunteered by the union. In the instant case, Respondent never offered the information to the Union if the Union would make assurances against abuse of the information. The factor of union assurance is thus academic. In any event, under the dispositive facts of this case—freedom of acts of violence, harassment, or intimidation for 5 or 6 years—there would appear to be no reason for the Union to have to give such assurance had Respondent requested it—which it did not.[14]

In sum, the above analysis disposes of Respondent's three defenses (assuming those defenses are proper in the absence of proof of a ''clear and present danger''): First, I conclude that the Union did not request the information in bad faith; rather, it desired the addresses of the replacement employees in order to prosecute grievances or, more likely, proselytize them and to gain their support in the Union's relationship to the Respondent. Second, contrary to Respondent, I conclude that the Union had a ''legitimate need'' for the information requested. The fact that Respondent consistently permitted the chapel chairman on each shift to post notices of meetings and to hold chapel meetings on Respondent's premises in nonworktime and in nonwork areas or even off Respondent's premises, on the above analysis, is no substitute for the Union's obtaining the addresses directly from Respondent pursuant to its legal obligation. Lastly, Respondent's defense that it provided a reasonable alternative to satisfy any such legitimate need, i.e., willingness to supply the information to a neutral accounting firm is, under the present circumstances, irrelevant. The ''reasonable alternative'' defense, as I have concluded, above, comes into play only when triggered by the employer's reasonable fear of a clear and present danger that its own interests along with the safety of replacement employees' persons and property would be at risk if the home addresses were given. In the instant case, there is no such triggering effect because, as the Board pointed out in *Page Litho*, supra at 882, there are no contemporaneous acts of violence, intimidation, or harassment. Rather, here, the 5- or 6-year period of freedom from such acts insulates the Union against Respondent's reasonable fear (much less a ''clear and present danger'') under *Page Litho*, supra at 883. Respondent is therefore obliged to execute its *Acme Industrial* obligation of supplying the names and addresses as underlined in *NLRB v. Wyman-Gordon*, supra.

I conclude under *Page Litho*, supra, that 5 or 6 years' freedom from acts of intimidation, coercion, harassment, or violence, whether or not attributable to the union, eliminates the existence of a clear and present danger of intimidation, harassment, or violence against the replacement employees. In the absence of any other credible and viable defense, including the reasons advanced by Director of Labor Relations Howe at the hearing, Respondent violated Section 8(a)(1) and (5) of the Act in failing to supply the information (names and addresses of unit employees) directly to the Union pursuant to the Union's February 4, 1993 request as alleged in the complaint.

CONCLUSIONS OF LAW

1. Respondent Chicago Tribune Co. is an employer within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union, for purposes of collective bargaining, is the exclusive representative, inter alia, of the employees in the following unit which the parties, for purposes of this proceeding, have agreed is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All the employees engaged in the operation of the presses in the pressrooms of the Employer and such rewinding machines of the Employer as are used for printing. The press department shall be interpreted to mean the entire press room and not any portion of this department, and shall be understood to mean such as is made up of union employees and in which the Union has been formerly recognized by the Employer.

4. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to supply directly to the Union, pursuant to the Union's request of February 4, 1993, a list of all employees in the above unit with their current addresses.

5. The unfair labor practice committed by Respondent is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent is engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, it will be ordered that it cease and desist therefrom and to take certain affirmative action deemed necessary to effectuate the policies of the Act. In particular, aside from the posting of a notice, I shall direct that Respondent forthwith

[14] I would not, in any event, lean heavily on the assurance of a labor organization which was in the midst of, or had recently been engaged in, acts of violence, harassment, or intimidation of the replacement employees. I would seek something more tangible than union assurances. I would rely, rather, on 5- or 6-year freedom from acts of violence or intimidation against the replacement employees if I, as the employer, should surrender the information to the Union. In any event, the Board, in *Page Litho*, supra at fn. 8, places the burden of requesting assurances on the employer. Respondent did not request the Union to make any such assurances in the instant case.

provide the Union directly with the names and addresses of the unit employees pursuant to the February 4, 1993 union request as such unit exists at the time of the adoption by the Board of my recommended Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Chicago Tribune Co., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to supply to Chicago Web Printing Pressmen's Union No. 7 a list of all employees in the unit described above together with the current addresses of such employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Forthwith provide the Union with a list of all employees in the above unit together with their current addresses as such exist at the time of the entry of the Board's Order in this matter.

(b) Post at its Freedom Center facility in Chicago, Illinois, copies of the attached notice marked ''Appendix.''[16] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with Chicago Web Printing Pressmen's Union No. 7, a subordinate union of the Graphic Communications International Union, AFL–CIO by refusing to furnish directly to the Union information requested by the Union on February 4, 1993, which information is a list of all employees in the unit represented by the Union together with the addresses of such employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information requested in its request of February 4, 1993.

CHICAGO TRIBUNE CO.